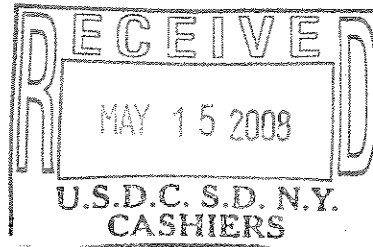


**JUDGE DANIELS**

**08 CV 4535**

Robert S. Weisbein (RW-0080)  
FOLEY & LARDNER LLP  
90 Park Avenue, 37<sup>th</sup> Floor  
New York City, NY 10016-1314  
Phone: (212) 682-7474  
Facsimile: (212) 687-2329  
*Attorneys for Plaintiff*  
*Super-Trim, Inc.*



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SUPER-TRIM, INC., a New York  
corporation,  
Plaintiff,

v.

SEARS HOLDINGS CORPORATION a Delaware  
corporation,  
Defendant.

**COMPLAINT**

**JURY TRIAL DEMANDED**

Civil Action No.:

Plaintiff Super-Trim, Inc. ("Super-Trim"), by and through its attorneys, Foley & Lardner LLP, for its Complaint against Defendant, Sears Holdings Corporation ("Sears" or "Defendant"), alleges the following:

**NATURE OF THIS ACTION**

1. This is an action for copyright infringement in violation of 17 U.S.C. §101 *et seq.*

**THE PARTIES**

2. Plaintiff Super-Trim is a New York corporation with its principal place of business at 30 West 24th Street, New York, New York 10010.

3. Upon information and belief, Sears is a Delaware corporation with a place of business at 3333 Beverly Road B6-260B, Hoffman Estates, Illinois 60179.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1338 and 1367.

5. Venue in this District is proper pursuant to 28 U.S.C. §1391.

6. This Court has in personam jurisdiction over Sears pursuant to C.P.L.R. §§301 and 302 in that, upon information and belief, Sears is soliciting and doing business within the State of New York on a regular and systematic basis, and/or has transacted business or committed tortious acts within this state, from which this cause of action arises.

**FACTS COMMON TO ALL COUNTS**

***Super-Trim's Copyright***

7. Super-Trim is a leading designer and distributor of lace and other ornamental trims for apparel.

8. In or about 1985, Super-Trim created an original design for a lace pattern consisting of a repeating pattern of a six petal flower followed by a shield design (the "6/446 Design"). A photocopy of Super-Trim's lace with the 6/446 Design is attached as Exhibit I.

9. The 6/446 Design constitutes an original work of authorship and copyrightable subject matter under the laws of the United States, 17 U.S.C. §101 *et seq.* Super-Trim is the author of the 6/446 Design and owns all right, title and interest therein.

10. Super-Trim has duly complied in all respects with the provisions of the copyright law of the United States, and has secured the exclusive rights and privileges in and to the 6/446 Design, as well as the copyright therein. Super-Trim has duly registered its copyright in the 6/446 Design with the United States Copyright Office and is the owner of Copyright Registration No. VA 401-245 and related Supplementary Registration No. VA 1-425-331 for the 6/446

Design. A true and correct copy of the Copyright Registration and Supplementary Registration for the copyright in this work is attached as Exhibit 2.

11. All copies of the work have been sold in conformity with the provisions of the copyright law of the United States.

***Defendant's Infringing Activities***

12. Upon information and belief, Sears is a leading retailer of apparel and related accessories for men, women and children. Its Intimate Apparel division develops new fabrics, designs and manufactures ladies' sleepwear, loungewear and robes that are sold in its department stores.

13. In or about August 2007, Super-Trim learned that Sears was offering for sale and selling a 2-piece camisole and shorts set, identified as "Misses Cami Tap" in the color "Slipper Pink", Style No. M12715, under Sears' private label ENCHANTING, that prominently bore a lace trim along base of the garment that was substantially similar, if not identical, to Super-Trim's 6/446 Design (hereinafter the "Infringing Garment"). Pictures of the 2-piece camisole and shorts set are attached as Exhibit 3.

14. On or about August 9, 2008, Super-Trim, through its attorneys Darby & Darby, sent a letter to Sears informing Sears of Super-Trim's copyright in the 6/446 Design and requesting that Sears immediately cease and desist from all further distribution, sales, promotion, or marketing of the Infringing Garment and all other garments which incorporate lace that infringes Super-Trim's 6/446 Design (collectively, "Existing Infringing Garments"), and provide written assurances attesting thereto. A copy of the August 9, 2008 letter (without attachments) is attached as Exhibit 4.

15. In response to the August 9, 2008 letter, Super-Trim and Sears engaged in settlement negotiations from August 2008 up until the filing of this Complaint. During the

course of these negotiations, Super-Trim learned that the ENCHANTING “Missing Cami Tap” was designed by Sears,, which then contracted for the manufacture of the garment in Asia. During this time, Super-Trim also became aware of additional Existing Infringing Garments.

16. Upon information and belief, the Head Buyer (or Director) of Intimate Apparel at Sears previously worked for a company known as Night Magic, a division of Apparel Concepts International, Inc., and during her employment sampled Super-Trim’s 6/446 lace.

17. Upon information and belief, having previously sampled Super-Trim’s 6/446 lace, the Head Buyer (or Director) of Intimate Apparel at Sears was aware of Super-Trims’ copyright in the 6/446 Design.

18. Upon information and belief, Sears had access to the 6/446 Design prior to creating, designing, manufacturing and selling the Existing Infringing Garments.

19. In or about November 2007, Super-Trim learned that Sears was offering for sale and selling a bra identified as “Cotton Spacer SC,” Style No. M82986, under Sears’ private label ENCHANTING, that prominently bore a lace trim that was substantially similar, if not identical, to Super-Trim’s 6/446 Design. The sole design feature and adornment to Sears’ otherwise plain, white bra is a lace that infringes Super-Trim’s 6/446 Design. Pictures of the bra are attached as Exhibit 5.

20. On or about November 20, 2007, Super-Trim, through its attorneys Darby & Darby, informed Sears that the lace adorning the bra “Cotton Spacer SC,” Style No. M82986 infringed the 6/446 Design and reiterated its demand that Sears immediately cease and desist from all further distribution, sales, promotion, or marking of any Existing Infringing Garments, including the bra “Cotton Spacer SC,” Style No. M82986, and provide written assurances attesting thereto.

21. In or about November 2007, Super-Trim learned that Sears was offering for sale and selling chemises under Sears' private label ENCHANTING, that prominently bore a lace trim that was substantially similar, if not identical, to Super-Trim's 6/446 Design. The chemises were sold and offered for sale in the following styles: "Misses Chemise" in the color "Spa Blue," Style No. M12705; "Misses Chemise" in the color "Off White," Style No. M12707; "Misses Chemise" in the color "Lime Cream," Style No. M12709; "Woman Chemise" in the color "Spa Blue," Style No. M12725; and "Woman Chemise" in the color "Slipper Pink," Style No. M12727. Pictures of the chemises are attached as Exhibit 6.

22. On or about November 20, 2007, Super-Trim, through its attorneys Darby & Darby, informed Sears that the lace trim on the chemises infringed the 6/446 Design and reiterated its demand that Sears immediately cease and desist from all further distribution, sales, promotion, or marking of any Existing Infringing Garments, including the chemises "Misses Chemise" in the color "Spa Blue," Style No. M12705; "Misses Chemise" in the color "Off White," Style No. M12707; "Misses Chemise" in the color "Lime Cream," Style No. M12709; "Woman Chemise" in the color "Spa Blue," Style No. M12725; and "Woman Chemise" in the color "Slipper Pink," Style No. M12727, and provide written assurances attesting thereto.

23. In or about November 2007, Super-Trim learned that Sears was offering for sale and selling additional 2-piece camisole and shorts sets under Sears' private label ENCHANTING, that prominently bore a lace trim that was substantially similar, if not identical, to Super-Trim's 6/446 Design. These 2-piece camisole and shorts sets were identical to the Infringing Product identified in August 2008, and were sold and offered for sale in the following additional styles: "Misses Cami Tap" in the color "Spa Blue," Style No. M12713; "Misses Cami Tap" in the color "Victorian Pink," Style No. M12714; and "Misses Cami Tap" in the color

“Lime Cream,” Style No. M12716. Pictures of the additional 2-piece camisole and shorts sets are attached as Exhibit 7.

24. On or about November 20, 2007, Super-Trim, through its attorneys Darby & Darby, informed Sears that the lace trim on the additional 2-piece camisole and shorts sets infringed the 6/446 Design and reiterated its demand that Sears immediately cease and desist from all further distribution, sales, promotion, or marking of any Existing Infringing Garments, including the additional 2-piece camisole and shorts sets “Misses Cami Tap” in the color “Spa Blue,” Style No. M12713; “Misses Cami Tap” in the color “Victorian Pink,” Style No. M12714; and “Misses Cami Tap” in the color “Lime Cream,” Style No. M12716, and provide written assurances attesting thereto.

25. In or about December 2007, Super-Trim learned that Sears was offering for sale and selling a 2-piece pajama set identified as “Misses Black PJ Set,” in the color “Fashion Stain Black,” Style No. M10062, under Sears’ private label ENCHANTING, that prominently bore a lace trim that was substantially similar, if not identical, to Super-Trim’s 6/446 Design. Pictures of the 2-piece pajama set are attached as Exhibit 8.

26. On or about December 10, 2007, Super-Trim, through its attorneys Darby & Darby, informed Sears that the lace trim on the 2-piece pajama set infringed the 6/446 Design and, as such, the 2-piece pajama set was a garment within the meaning of the term Existing Infringing Garments. Accordingly, Super-Trim’s demand that Sears “immediately cease and desist from all further distribution, sales, promotion, or marking of any Existing Infringing Garments and provide written assurances attesting thereto” applied to the 2-piece pajama set “Misses Black PJ Set,” in the color “Fashion Stain Black,” Style No. M10062.

27. In or about February 2008, Super-Trim learned that Sears was offering for sale and selling additional chemises under Sears’ private label ENCHANTING, that prominently bore

a lace trim that was substantially similar, if not identical, to Super-Trim's 6/446 Design. The additional chemises were sold and offered for sale in the following styles: "Misses Black Chemise," in the color "Fashion Satin Black," Style No. M10063; "Misses Chemise," in the color "Wild Thing," Style No. 10053 (black lace trim); and "Misses Chemise," in the color "Wild Thing," Style No. 10052 (pink lace trim). Pictures of the additional chemises are attached as Exhibit 9.

28. On or about February 25, 2008, Super-Trim, through its attorneys Darby & Darby, informed Sears that the lace trim on additional chemises infringed the 6/446 Design. Since the additional chemises were garments that incorporated Super-Trim's 6/446 Design and as such, the additional chemises were garments within the meaning of the term Existing Infringing Garments. Accordingly, Super-Trim's demand that Sears "immediately cease and desist from all further distribution, sales, promotion, or marking of any Existing Infringing Garments and provide written assurances attesting thereto" applied to the additional chemises "Misses Black Chemise," in the color "Fashion Satin Black," Style No. M10063; "Misses Chemise," in the color "Wild Thing," Style No. 10053 (black lace trim); and "Misses Chemise," in the color "Wild Thing," Style No. 10052 (pink lace trim).

29. Upon information and belief, notwithstanding Sears' knowledge of Super-Trim's copyright in the 6/446 Design, Sears has continued to willfully sell and offer for sale Existing Infringing Garments, including the additional chemises "Misses Black Chemise," in the color "Fashion Satin Black," Style No. M10063; "Misses Chemise," in the color "Wild Thing," Style No. 10053 (black lace trim); and "Misses Chemise," in the color "Wild Thing," Style No. 10052 (pink lace trim).

30. In or about February 2008, Super-Trim learned that Sears was offering for sale and selling panties under Sears' private label ENCHANTING, that prominently bore a lace trim

that was substantially similar, if not identical, to Super-Trim's 6/446 Design. The panties were sold and offered for sale in the following styles: "Gingham Mesh Boyleg" in the color "Black," Style No. M61136 and "Gingham Mesh Boyleg" in the color "Boysenberry," Style No. M61142. Pictures of the panties are attached as Exhibit 10.

31. On or about February 25, 2008, Super-Trim, through its attorneys Darby & Darby, informed Sears that the lace trim on the panties infringed the 6/446 Design and as such, the panties were garments within the meaning of the term Existing Infringing Garments. Accordingly, Super-Trim's demand that Sears "immediately cease and desist from all further distribution, sales, promotion, or marking of any Existing Infringing Garments and provide written assurances attesting thereto" applied to the panties "Gingham Mesh Boyleg" in the color "Black," Style No. M61136 and "Gingham Mesh Boyleg" in the color "Boysenberry," Style No. M61142.

32. In or about May 2008, Super-Trim learned that Sears was offering for sale and selling an additional chemise "Womens [sic] Chemise" in the color "Wild Thing," Style No. M10057, under Sears' private label ENCHANTING, that prominently bore a lace trim that was substantially similar, if not identical, to Super-Trim's 6/446 Design. Pictures of the additional chemise are attached as Exhibit 11.

33. On or about May 9, 2008, Super-Trim, through its attorneys Darby & Darby, informed Sears that the lace trim on the additional chemise "Womens [sic] Chemise" in the color "Wild Thing," Style No. M10057, infringed the 6/446 Design and as such, the additional chemises are garments within the meaning of the term Existing Infringing Garments. Accordingly, Super-Trim's demand that Sears "immediately cease and desist from all further distribution, sales, promotion, or marking of any Existing Infringing Garments and provide



written assurances attesting thereto” applied to the additional chemise “Womens [sic] Chemise” in the color “Wild Thing,” Style No. M10057.

34. Upon information and belief, notwithstanding Sears’ knowledge of Super-Trim’s copyright in the 6/446 Design, Sears is continuing to willfully sell and offer for sale Existing Infringing Garments notwithstanding Super-Trim’s demand that such sales and offers for sale be discontinued.

35. The lace trim on the Existing Infringing Garments is substantially similar to and copies Super-Trim’s 6/446 Design.

36. Upon information and belief, with complete knowledge of Super-Trim’s copyrights, Sears infringed Super-Trim’s copyright in its 6/446 Design by copying the 6/446 Design without Super-Trim’s permission, license, or consent.

37. Upon information and belief, Sears has committed the infringing acts complained of herein willfully and with conscious disregard for Super-Trim’s rights.

38. Upon information and belief, Sears’s actions have caused damage and irreparable harm to Super-Trim. Unless Sears is compelled to discontinue these actions by the Court, Super-Trim will continue to suffer such damage and irreparable harm.

39. Super-Trim has no adequate remedy at law.

**CLAIM FOR RELIEF - COPYRIGHT INFRINGEMENT**  
**UNDER FEDERAL LAW**

40. Super-Trim repeats and realleges paragraphs 1-39 of this Complaint as if fully set forth herein.

41. Super-Trim’s 6/446 Design has never been dedicated to the public.

42. At all times pertinent to this Complaint, Super-Trim is, and still is, the sole and exclusive proprietor of all right, title and interest in and to the 6/446 Design, including the copyrights therein. Super-Trim has never assigned, licensed, or otherwise transferred any of

these rights, including its copyrights to Sears. Super-Trim has never authorized Sears to copy, distribute, or license the 6/446 Design.

43. By its acts complained of herein, Sears has infringed the copyright in the 6/446 Design in violation of §§106(1) and (2), and §501(a) of the United States Copyright Act, 17 U.S.C. §101, *et seq.*

44. Sears has committed the acts complained of herein willfully.

**JURY TRIAL DEMAND**

45. Super-Trim hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38.

**PRAYER FOR RELIEF**

WHEREFORE, Super-Trim prays for judgment against Sears that:

A. Sears willfully infringed Super-Trim's copyright in the 6/446 Design.

B. Sears, its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with it, including any and all third party fabric, lace, ornamental trim, and/or apparel manufacturers, distributors and suppliers who receive actual notice of the Order or Judgment by any method:

i. be permanently enjoined and restrained from copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the 6/446 Design or any design substantially similar thereto;

ii. be permanently enjoined and restrained from copying, reproducing, using, selling, manufacturing, or creating derivative works based upon the 6/446 Design or any design substantially similar thereto; and

iii. be ordered to surrender to Super-Trim all Existing Infringing Garments or other garments or materials in its possession, custody or control displaying, copying, and/or bearing the 6/446 Design or any design substantially similar thereto.

C. Sears be ordered to send written notice, approved by the Court, to each licensee, manufacturer, supplier, distributor, wholesaler and retailer, or any other party who manufactured the Existing Infringing Garments, sold the Existing Infringing Garments, or manufactured or sold other garments bearing the 6/446 Design, with a copy of each such written notice to be furnished to Super-Trim:

i. requesting that the recipient surrender to Super-Trim all garments bearing the 6/446 Design in its possession, custody or control;

ii. advising the recipient that pursuant to the Judgment of this Court, Sears has been enjoined from copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the 6/446 Design or authorizing any third party to copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the 6/446 Design.

D. Sears destroy all Existing Infringing Garments, materials, documents, catalogues, or advertisements bearing the 6/446 Design in its possession, custody and control pursuant to 17 U.S.C. § 503.

E. Sears be required to pay Super-Trim all profits realized by it as a result of its unlawful infringing acts as complained of herein pursuant to 17 U.S.C. § 504, which are not yet determined but believed to be in excess of \$1,000,000.00.

F. Sears be required to compensate Super-Trim for all actual damages suffered by Super-Trim as a result of its unlawful infringing acts as complained of herein pursuant to 17 U.S.C. § 504.

G. In the alternative, Sears be required to pay Super-Trim statutory damages pursuant to 17 U.S.C. § 504, and in respect of Sears said statutory damages shall be in the amount of \$150,000 as enhanced as a result of Sears willful infringing acts as complained of herein.

H. Super-Trim be awarded its costs, expenses and reasonable attorney's fees incurred in bringing this action pursuant to 17 U.S.C. § 505.

I. Sears file with the Court, and serve upon Super-Trim's counsel, within thirty (30) days after the entry of the Judgment, a report in writing and under oath setting forth in detail the manner in which it has complied with the requirements of such Judgment.

J. Super-Trim be granted such other and further relief as the Court may deem just and proper.

Dated: May 15, 2008

Respectfully submitted,

By: 

Robert S. Weisbein (RW-0080)  
FOLEY & LARDNER LLP  
90 Park Avenue, 37<sup>th</sup> Floor  
New York City, NY 10016-1314  
Phone: (212) 682-7474  
Facsimile: (212) 687-2329  
*Attorneys for Plaintiff*  
*Super-Trim, Inc.*